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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,186	03/27/2000	George McBride	CARDIOBEAT-1	3794
7590	12/01/2005		EXAMINER	
Donald J. Lenkszus PC P O Box 3064 Carefree, AZ 85377			KIM, PAUL L	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

A

Office Action Summary	Application No.	Applicant(s)	
	09/535,186	MCBRIDE ET AL.	
	Examiner	Art Unit	
	Paul Kim	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-10, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,307,263) in view of Reining and Brown et al (US 5,879,163).

With reference to claims 1 and 4-6, Brown (US 5,307,263) teaches a medical testing method comprising the steps of: providing and coupling a sensor to a subject (fig. 1, parts 16, 20, and 22), coupling the sensors to an apparatus having access to a network (fig. 1, part 10), operating the apparatus to automatically obtain test measurement data from the sensors (col. 10, lines 5-14), uploading the test measurement data via the network to a location remote from the subject (fig. 1, part 52 & 54 and col. 11, line 65 to col. 12, line 15), providing a server at a remote location (fig. 2, part 54), processing the measurement data at the central server to produce processed data (col. 12, lines 16-26), downloading the processed data from the server to the apparatus (col. 12, lines 26-28), and displaying the information (figs. 5-10 and col. 19, lines 52-61).

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Brown (US 5,307,263) teaches the apparatus monitoring health of a patient in general, but does not specify monitoring cardiac impedance. Reining teaches a method of measuring impedance data of a patient using non-invasive sensors and transferring measurement data remotely to a server (fig. 1). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown, so that impedance is measured, as taught by Reining, so as to derive the benefit of increased system flexibility and cost savings by being able to perform a variety of measurements with one system.

Brown (US 5,307,263) teaches the test apparatus having access to the network, but does not specify the network being an Internet. Brown et al (US 5,879,163) teaches a patient health monitoring system that communicates raw data to a remote server by Internet (col. 6, lines 49-54). It would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown (US 5,307,263), so that data is communicated via Internet as taught by Brown et al (US 5,879,163), so as to be able to communicate data through a common medium for cost efficiency.

With reference to claim 7, Brown (US 5,307,263) teaches a second apparatus being used to interact with the server (fig. 2, part 62).

With reference to claims 8 and 9, Brown (US 5,307,263) teaches a database storing processed data (col. 12, lines 53-55).

With reference to claim 10, Brown (US 5,307,263) teaches data being stored at different times (col. 1, lines 52-56).

With reference to claims 18-20, Brown (US 5,307,263) teaches providing

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multimedia means at the apparatus and using the interface to communicate test instructions to the subject (col. 17, lines 61+).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 5,307,263) and Reining in view of Williams et al.

Brown teaches automatically processing data obtained from the subject and transmitting the data to the second apparatus, but does not specify analyzing the data historically. Williams et al teaches a method of analyzing stored historical data obtained from a patient (§ 67 and figure 4). Since Brown and Williams et al are both within the art of patient monitoring and because analyzing historical data is well known in the art, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown, so that historical analysis is applied to collected data, as taught by Williams et al, so as to derive the benefit of trend analysis of recorded data.

Response to Arguments

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5. Applicant's arguments filed September 19, 2005 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With regard to applicant's argument that Brown (US 5,307,263) does not teach "test sensors", applicant's attention should be directed to figure 3, parts 74. Brown clearly teaches test sensors being used.

In response to applicant's argument that there is no suggestion to combine Brown and Reining, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Brown teaches the essential elements of the claimed invention such as performing a measurement on a patient, transferring the data to a remote location for processing, processing the data, and returning the results. Brown does not specify sensors being non-invasive and does not specify the sensors measuring impedance. Brown teaches that additional devices can be used to perform measurements (fig. 1, part 22). Reining teaches

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a system for performing non-invasive impedance tests and transfers this data to a computer for additional processing (fig. 1 & col. 5, lines 61+). Since Brown and Reining are both within the art of performing medical tests and transferring data to a computer, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to modify Brown, so that impedance is measured, as taught by Reining, so as to derive the benefit of increased system flexibility and cost savings by being able to perform a variety of measurements with one system.

With regard to applicant's argument that Brown (US 5,307,263) does not teach transferring data over the Internet, again, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Brown (US 5,879,163) teaches that transferring data over the Internet is well known in the art and can be applied to a medical testing system (col. 6, lines 49-54).

With regard to applicant's argument that Brown (US 5,307,263) does not teach a network, applicant's attention is directed to the relationships among parts of figure 1 and figure 2. Webopedia's definition of the term network: "A group of two or more computer systems linked together". Brown shows at least two computers linked together (fig. 1, parts 40 & 54 and fig. 2, parts 54 & 62).

With regard to applicant's argument that Halpern does not teach an analysis program, the examiner has disclosed the incorrect reference during the

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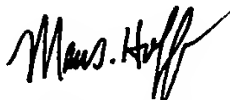
last office action. The correct reference should be Williams et al. Williams et al is provided in the PTO-892 form.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is 571-272-2217. The examiner can normally be reached on Monday-Thursday 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

PK
November 26, 2005


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800